



U.S. Department
of Transportation



Saint Lawrence
Seaway Development
Corporation

December 21, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

FILED ELECTRONICALLY

Re: Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, WT Docket No. 04-344, RM-1021; **EX PARTE PRESENTATION**

Dear Ms. Dortch,

Pursuant to section 1.1206(b)(1) of the Commission's Rules (47 C.F.R. § 1.1206(b)(1)), enclosed please find a copy of a letter from Craig H. Middlebrook, Deputy Administrator and Acting Chief Counsel of the Saint Lawrence Seaway Development Corporation, to Dan Smith, President and Chief Executive Officer of MariTEL, Inc., in response to a letter from Dan Smith, CEO of MariTEL, to Albert S. Jacquez, Administrator of the Saint Lawrence Seaway Development Corporation (enclosed). Please include these letters in the public record of the above-referenced docket.

Please direct any questions you may have regarding this letter to the undersigned. Thank you for your cooperation.

Respectfully submitted,

Craig H. Middlebrook
Deputy Administrator and Acting Chief Counsel

cc: John Muleta
Catherine W. Seidel
Michael Wilhelm
Scot Stone
Tim Maguire
Jeffrey Tobias



U.S. Department
of Transportation



Saint Lawrence
Seaway Development
Corporation

17 December 2004

Via Registered Mail

Mr. Dan Smith
President and Chief Executive Officer
MariTEL, Inc.
P.O. Box 533
Cumming, GA 30028-0533

Re: MariTEL "Invoice"

Dear Mr. Smith:

This is in response to your undated letter to Mr. Albert S. Jacquez, Administrator of the Saint Lawrence Seaway Development Corporation ("SLSDC" or "Corporation"), purporting to "invoice" the Corporation for use of VHF channel 87. Notwithstanding your letter's allusion to unspecified "action" that MariTEL, Inc. ("MariTEL") will take "to insure that channel 87 will not be available" if the SLSDC does not enter into an arrangement with MariTEL for continued use of that channel, the Corporation intends neither to remit payment to nor enter into an agreement with MariTEL.

As you know, the SLSDC uses channel 87B pursuant to authorization from the National Telecommunications and Information Administration ("NTIA"), a process that entails coordination with the Federal Communications Commission ("FCC"). NTIA Government Master File Serial Nos. TRAN030003 through TRAN030005 inclusive. Moreover, insofar as the SLSDC administers the St. Lawrence Seaway jointly with its Canadian counterpart (the St. Lawrence Seaway Management Corporation), our use of channel 87B has been coordinated with and authorized by the Government of Canada.

Neither the auction pursuant to which MariTEL lays claim to this channel nor any other FCC action has ever invalidated or superseded these authorizations. Under the circumstances, therefore, there is no basis for your demand for compensation.

Mr. Dan Smith
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Finally, I appreciate that your letter acknowledges "the very important AIS services" provided by the SLSDC through channel 87B. The Corporation will continue to offer these services in order to maintain the safety and security of the Seaway and the vessels transiting it, as well as to assist the U.S. Coast Guard in maintaining maritime domain awareness in support of homeland security.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. H. Middlebrook".

Craig H. Middlebrook
Deputy Administrator and Acting Chief Counsel

cc: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW.
Washington, DC 20554
[WT Docket No. 04-344; RM-10821; FCC 4-207]



Mr. Albert S. Jacquez
Administrator
Saint Lawrence Seaway Development Corporation
400 Seventh Street, S.W.
Suite 5424
Washington, D.C. 20590

Re: Invoice for Use of VHF Channel 87

Dear Mr. Jacquez:

This letter will serve as an invoice for \$44,000.00 from MariTEL, Inc. ("MariTEL") to the Saint Lawrence Seaway Development Corporation ("SLSDC") for the use of VHF channel 87 for the period between January 5, 2004 to November 30, 2004. The invoice amount is due upon receipt and will be considered past due December 30, 2004.

Please remit payment to:

MariTEL
P.O. Box 533
Cumming, GA 30028

As you know, MariTEL is the Federal Communications Commission ("FCC") licensee of channel 87. MariTEL does not wish to interfere with the important work performed by the SLSDC. On the other hand, the SLSDC should not be excused from the financial obligation for using MariTEL's asset, any more than it would be excused from paying for any other asset it employs. On a going forward basis, MariTEL will gladly enter into an FCC approved leasing arrangement with SLSDC to use channel 87B for its current area of responsibility at a rate of \$4,000 per month. If the SLSDC does not enter into a lease with MariTEL covering the period beginning December 1, 2004 MariTEL will take action to insure that channel 87 will not be available now and in the immediate future for the SLSDC's continued use.

MariTEL is aware that the SLSDC has contended that it had authority to operate on channel 87 pursuant to a Memorandum of Agreement ("MOA") between MariTEL and the United States Coast Guard ("USCG"). The MOA prescribed specific circumstances under which the USCG would be permitted to allow others to employ channel 87. For example, Section V (B)(8) made it clear that the USCG was obligated to establish appropriate criteria governing access to the use of channel 87 by others, and that any such use could only be permitted pursuant to an agreement between the USCG and that other entity. Moreover, the MOA only covered the period beginning in March 2001.

The attached invoice does not cover the period from March 2000 (when we understand that SLSDC began to encumber and subsequently transmit on channel 87) to



January 4, 2004. However, if the USCG did not establish the criteria for access to channel 87 and did not enter into the required agreement with the SLSDC, the SLSDC's use of channel 87 would be considered outside the scope of the MOA. In that case, we would be required to invoice the SLSDC for that period as well (some of which includes the period prior to the execution of the MOA in March 2001 in any case). Please provide us with evidence that the MOA covered the SLSDC's use of channel 87 and also confirm or correct our assumption that your implied use of channel 87 began in March 2000. If we are not supplied the requested documentation by December 22, 2004 we will assume that: 1) the SLSDC's use of channel 87 did not occur under the conditions of the MOA; and 2) the SLSDC used channel 87 prior to the MOA in any case, and MariTEL will subsequently invoice SLSDC for this additional use of channel 87.

In any case, as the FCC recently recognized, that MOA was terminated as of May 5, 2003.^{1/} Based, in part, on that termination, the FCC initiated a rule making decision (FCC Docket No. 04-334, released October 15, 2004) that proposes to reallocate channel 87 for automatic identification system ("AIS") operations.^{2/} Until such time as the FCC completes its rule making proceeding, MariTEL has full and exclusive rights to employ channel 87 (subject only to the rights of FCC licensed incumbent operators and those of mariners, established by the FCC's June 13, 2002 Public Notice).^{3/} Therefore, regardless of whether the SLSDC may have been covered by the MariTEL/USCG MOA, there can be no doubt that after the termination of the MOA, the SLSDC was operating on MariTEL's authorized channel without compensating MariTEL.

MariTEL is authorized and is indeed expected to provide communications services for hire. Therefore, like any other entity using MariTEL's channels, the SLSDC should pay for its use of channel 87. MariTEL bases its invoice amount on the value derived from other spectrum use agreements with public safety and critical infrastructure entities as well as primary feedback from maritime entities desiring to use channel 87 for shore station AIS operations.

^{1/} The USCG has argued that it (and by extension, the SLSDC) was entitled to use channel 87 for a period of six months after the USCG was notified of termination of the MOA. MariTEL disagrees with the USCG's interpretation. However, for the purpose of this letter only MariTEL assumes that the six-month period could have started no later than July 4, 2003.

^{2/} In that proceeding, the FCC also determined that MariTEL's use of channel 88 above "Line A" is subsidiary to the Federal government's use of that channel. While MariTEL does not agree with the FCC's assessment, it does not pursue that matter in the context of this invoice.

^{3/} MariTEL recognizes that the SLSDC was issued an authorization by the National Telecommunications and Information Administration ("NTIA") to use channel 87. However, as the FCC's recent notice of proposed rule making makes clear, NTIA's ability, if any, to permit use of channel 87, was derivative of the MOA, which was terminated on May 5, 2003. Therefore, any authorization issued to use channel 87 to the SLSDC by NTIA became invalid no later than January 5, 2004.



We look forward to providing SLSDC the continued use of our spectrum for the very important AIS services that channel 87 enables.

With Regards,

Dan Smith
Dan Smith

President/CEO